

THE PASSAGE OF ABANDONED MINE LAND DISCLOSURE LEGISLATION¹

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Abstract. The Virginia General Assembly passed critical legislation this year. The legislation modified the Residential Property Disclosure Act to now include abandoned mine disclosure in certain counties. This type of legislation was introduced for the first time this year, and its resulting passage unusually successful. House Bill 1562 was approved by Governor Timothy M. Kaine and became law on July 1, 2006.

As the concerned citizen who brought the legal concerns to Delegate Katherine Waddell, the patron of the bill, the facts will highlight the positive results. The Virginia Department of Mines, Minerals and Energy's cooperation and support were critical to the passage of the legislation.

It is acknowledged that some states have a form of abandoned mine land disclosure, however conference attendees will hopefully benefit and find encouragement from the universal appeal of the inspiration and fortitude that were key components in this decision.

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Introduction

This paper provides information regarding the legislative milestone in Virginia requiring AML residential real estate disclosure. During the 2006 Regular Session the General Assembly modified the Code of Virginia Section 55-518 by approving House Bill 1562. The law effects builders/owners of new dwellings in certain counties and involves disclosure of abandoned mines, shafts, pits or mining operations, and is effective for all types of mines, not just coal mines.

The legislation modified the Virginia Residential Property Disclosure Act and was the first AML disclosure requirement of its type in the state. As a result of cooperative efforts put forth by the Department of Mines, Minerals and Energy's staff, General Assembly members and various individuals, the milestone was achieved. Fortitude and determination were also key components, as legislative passage was not guaranteed.

The Passage

The success of the legislation was the most important result of the dedication and partnership of the individuals involved. State employees and citizens worked with the General Assembly, which in and of itself may not be that unusual. However, it is important to note that the Virginia General Assembly 2006 Session only met for 60 days. During that period 3287 bills and resolutions were introduced. As published by the Division of Legislative Services, only 947 were approved by Governor Timothy Kaine or enacted. House Bill 1562 was fortunately a part of that group.

Impact Statement

One benefit, which assisted with the passage of the bill, was the positive determination by the Department of Planning and Budget. The department's responsibility was to determine how the bill, if enacted, would affect an agency or agencies within the state. Specifically, an analysis was conducted to ascertain if a budget amendment would be necessary as a result of the bill's approval. Their findings were documented in the 2006 Fiscal Impact Statement, which noted an amendment would not be required. Therefore, the bill was not expected to have a significant fiscal impact. At a time when Virginia's budget issues are frequently discussed and highlighted in the media, the significance of this evaluation cannot be overstated.

Also included in the analysis was the method of implementation anticipated by the Department of Mines, Minerals and Energy (DMME). It was indicated that "DMME will utilize existing in-house resources to develop an automated mechanism for determining whether mining operations had previously been conducted on the property. . ." It is certainly logical that for maximum

effectiveness, the process for disclosing data must be practical. Fortunately, a common sense approach was prevalent during most of the bill's life, including this early stage. DMME, in an effort to continually update their mine map inventory, encourages anyone with mine maps to contact them. DMME has remained steadfast in their endeavor to compile as much information as possible for their database.

The Process

The session convened on January 11, 2006 and the deadline for introducing legislation was January 20, 2006. Prior to the official presentation of HB 1562, the Division of Legislative Services provided legal assistance and verified that a similar law was not already in existence. Once it was determined which section of the Code of Virginia the bill would modify, the attorney assisted the bill patron in drafting the legislation.

From that point on it was up to the bill patron and supporters of the bill to promote and protect the legislation. The bill traveled through a House Subcommittee, House Committee, the House, Senate Committee, and the Senate. Due to changes in the bill, additional discussion was involved and it was sent back to the House for final approval.

Passage of the bill was no easy task. As typical with any type of real estate disclosure request, it was certain to draw concern from those who may view the bill as an imposition. In the end, the approval of the bill in its final state was a significant accomplishment for those who worked hard to achieve positive changes in the disclosure laws. This effort was put forth to provide for increased public health, safety, and welfare of citizens.

Virginia Mining History and Impact

Why is disclosure important in Virginia? Research prior to the submittal of the bill did not focus on the historical aspect specifically. However, it quickly became apparent that abandoned mine land in Virginia presented a unique set of issues due to its history. The Jamestown settlers began iron mining and smelting in 1609. The first United States commercial coal mining occurred near Richmond in 1709. During the Civil War coal played a critical role in the Commonwealth. As in many states, mine maps of the early mines are nonexistent and identifying the hidden dangers are difficult at best. Therefore, why not disclose where abandoned mine land has been documented to exist?

Coal mining has been present in Virginia for centuries, and is still an important industry. In 2005 the Commonwealth was the ninth largest producer of coal. Along with this activity comes the issue of AML. According to the Office of Surface Mining, an estimated \$179,000,000 is needed to remediate the known coal Priority 1 and 2 AML problems in the Commonwealth. This figure does not

include the non-coal mining areas, which obviously increases the financial impact to the Commonwealth. Most of the counties in the state are involved with production and processing of rock and mineral resources.

Therefore, the issue of abandoned mines will continue, partially due to the lack of sufficient funding to successfully eliminate all the abandoned mine land problems. Development continues to encroach on areas previously avoided. By using the existing AML documentation to encourage the local entities to do their part, citizens can be better protected from the impending dangers.

Partners in the Journey

With the uncertainty of AML long-term funding as part of the Surface Mining Control and Reclamation Act of 1977, states are left with addressing the health and safety issues of abandoned mines from many different angles. By requiring disclosure of AML, since funding is not adequate for complete remediation, some pressure is relieved. It is acknowledged that the impact may be a small step, however one that is closer to providing an avenue of safety for residents considering a home purchase. The question then became, “Where do you start?”

It did not take long to determine that legislation appeared to be the best approach. As the constituent who researched the abandoned mine land issues prior to contacting a member of the General Assembly, it was important to be able to convey the seriousness of the concern. Fortunately, experts within the Commonwealth and across the country were willing to share their knowledge and offered solutions when questioned about AML problems. As the research intensified, it appeared that additional legislation to protect citizens was warranted. There was no personal gain or benefit for me in taking this action. It was simply a matter of realizing that with knowledge came responsibility and action.

Virginia Department of Mines, Minerals and Energy

The DMME was involved in the early stages of my AML research, long before the idea of introducing legislation was ever considered. In all honesty, submitting a bill was something I never imagined would be the result of the interactions. Beginning with the initial phone call, the staff was extremely helpful and patiently answered my questions. Each answer created more questions however, which the staff continued to professionally address. It was obvious from the beginning that abandoned mine land safety issues did not have a quick fix, and that Virginia was not alone in having to address the serious concerns.

Mike Abbott, Dawn Bays, Susie Garrett, Richard Meade, Steve Walz, Gerald Wilkes and Roger Williams all played key roles in providing information along the journey. Their cooperation was outstanding and deserves recognition.

When the question arose regarding disclosures, it quickly became apparent a member of the General Assembly would need to be involved, as the DMME could not (understandably) introduce legislation.

The Honorable Delegate Katherine Waddell

The legislation would not have occurred without the assistance of Delegate Katherine Waddell, a freshman Independent. She agreed to meet with me to discuss my concerns and review the facts. As I told her about the abandoned mine land issues it became immediately apparent that she was willing to listen to what I had to say. She asked excellent questions and said she would take the information and conduct her own research before she made a decision. Delegate Waddell's concern was genuine from the very beginning, and I had complete trust in her. I was also impressed with the effort she was willing to put forth to make sure she had accurate information and that legislation was justified.

She was obviously a person of her word; she investigated and acted which was evidenced by the passage of House Bill 1562. Delegate Waddell diligently worked with the appropriate entities including the Virginia Department of Mines, Minerals and Energy, Division of Legislative Services, and the Home Builders Association of Virginia. Her commitment to the issue of AML disclosure was demonstrated by being the policy advocate. Delegate Waddell's courage set an outstanding example for many and was very inspirational. Those who share in her vision to protect citizens in the Commonwealth will never forget her support.

Constituent

As the constituent who requested to meet with Delegate Waddell, my involvement was minimal compared to her actions. However, as I became involved in the early stages through research, I was drawn to the issue because I saw a problem that needed to be corrected. As stated previously, there was no personal gain for me, and I did not benefit from the action of encouraging or assisting in the passage of the legislation. With the support from day one of a good friend, Mrs. Shari Bernard, the search for information continued. When I became aware of the apparent lack of legislative protection, a sense of responsibility was instilled. It was simply a matter of pursuing what was right, as I was raised to do.

In addition, I had been taught to ask what, where, when, how and why. And during that period the fact that no abandoned mine land disclosure law existed in the state was discovered. Questions were asked and as each one was answered, more questions resulted which sent me in multiple directions. With each additional step I took, there were new questions that needed addressing. When introducing the bill for consideration, it was understood there was no assurance of enactment, regardless of how positive and forthright the legislation

was being approached. Fortunately along the journey the right people were in place to have the goal become reality.

Homebuyers

Understandably, homebuyers are an important part of this discussion. Homebuyers consider their home purchase for a variety of reasons, including location, size of the home, cost/investment potential and acreage. Certainly they are influenced by a variety of needs. Some homeowners exercise due diligence when buying a home. However, most do not.

Why is this important? Unfortunately homebuyers are not always thorough in their research of an area. Furthermore, residents moving from another state are especially at a disadvantage. When relocating to a region where concerns may exist, avenues for locating information may not be apparent. In the case of abandoned mine land, key details, if available, could be provided about the property that would allow the homebuyer to make a more informed decision. The AML disclosure legislation now becomes an important part of the decision-making equation.

Conclusion

As a result of government and non-government partnership, progress has been made to help eliminate the unknown. Each step we take as a state, tribe and nation helps focus on the issues at hand. Individual actions have taken place along the journey, which helped with the theme of “We Proceeded On.” We cannot let the obstacles get in the way of progress. It is acknowledged that a permanent solution is not simple, and unfortunately may never be obtained. However, the positive actions we make contribute to creating a better environment for overall safety.

During his term as Virginia’s Governor prior to Governor Kaine, Mark R. Warner spoke about the dangers to the public regarding abandoned and active mine sites. The speech, which was given in May 2002, highlighted keeping children away from these areas. Each step that is made, whether it is a speech given by the Governor, an action made by a member of the legislative branch, or a citizen can have long-term impact.

It is acknowledged that many states have some form of underground or abandoned mine land disclosure. Each state has different issues to address and unique ways their legislative branches may choose to respond. My goal at this point is not to make anyone uncomfortable, however my purpose is to question. What else can you accomplish because of your title or position, regardless of the constraints you may face? Is there one more, or are there several more things your state can do to ensure safety for the next generation? The generations before us have protected us up to this point – now it is our turn.

Finally, I intentionally waited to the end of the paper to identify myself. I am not a scientist, engineer, lawyer, lobbyist or reporter. Instead, as an elementary school substitute teacher, I was put in a place that could have never been foreseen.

Acknowledgements

I am deeply indebted to the countless number of people who assisted in this journey over the past year. They willingly and openly shared their knowledge with me, extending their kindness and showing their giving spirit. In the early stages we didn't realize that legislation would be one of the destinations. Once involvement by the General Assembly was imminent, a specific, more concentrated group worked with me and offered guidance. Those mentioned in this paper played a key role, for which I am extremely grateful. I have explained many times that whether a supporter's role was big or small, everyone was considered equal. For without the help of each contributor, this goal may not have been reached.

Literature Cited/References

- Department of Planning and Budget 2006 Impact Statement, 2006.
<http://leg1.state.va.us/cgi-bin/legp504.exe?061+oth+HB1562FER122+PDF>,
March 20, 2006.
- Garton, Larry et al., 2006. Virginia General Assembly 2006 Session Summary,
Richmond, VA 2006, p.3.
- Governor Warner Issues Mine Safety Warning, 2002.
http://www.governor.virginia.gov/Press_Policy/Releases/2002/May2002/May2402.htm, May 24, 2002.
- Mineral Resource Development in Virginia, 2006. <http://mme.state.va.gov/>,
February 6, 2006.
- Office of Surface Mining Virginia Coal Mining Related Abandoned Mine Land
Problems High Priority (Priority 1 & 2), 2005. <http://www.osmre.gov/>,
August 27, 2005.
- Sweet, Palmer C. and Gerald P. Wilkes, 1990. Producers and Processors of Rock
and Mineral Materials in Virginia, Department of Mines, Minerals and Energy
Division of Mineral Resources, Map 1:1,000,000 scale, 1990.